

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-23494-CIV-HUCK/O'SULLIVAN

OLEM SHOE CORP.,
a Florida corporation,
Plaintiff,

v.

WASHINGTON SHOE CO.,
a Washington corporation,
Defendant.

/**ORDER**

THIS MATTER comes before the Court on an informal discovery conference held before the undersigned on June 3, 2010, on the Plaintiff's Request to Compel Defendant's Counsel to Testify in Deposition as Fact Witness and the Plaintiff's Request to Commission a Person Before Whom Deposition Upon Written Questions may be Taken. Having heard argument from the parties, it is

ORDERED AND ADJUDGED that the plaintiff has not met its burden with respect to Plaintiff's Request to Compel Defendant's Counsel to Testify in Deposition as Fact Witness, because the plaintiff has not demonstrated that the information is not available by other means. The information does not appear to the Court to be extremely relevant, and no deposition of counsel shall be taken at this time. It is further

ORDERED AND ADJUDGED that within seven (7) days of June 3, 2010, the defendant shall submit new affidavits in support of its Motion for Summary Judgment from a witness other than counsel in this case. The subject matter of the new affidavits is limited to the facts in the original affidavits.

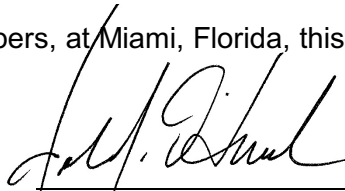
ORDERED AND ADJUDGED that the Plaintiff's Motion to Commission a Person Before Whom Deposition Upon Written Questions may be Taken (DE # 88, 5/17/10) is reinstated into

the record. The defendant shall file a response on or before June 10, 2010. All treaties and circulars upon which the defendant relies shall be attached to the response. The plaintiff may file a reply on or before June 17, 2010. It is further

ORDERED AND ADJUDGED that the parties shall follow the time limits outlined in F.R.C.P. 31 using the date of June 3, 2010, as the beginning measuring date, to submit the cross-examination questions, re-direct questions, and re-cross examination questions regarding the plaintiff's written deposition questions. It is further

ORDERED AND ADJUDGED that if the undersigned rules that a person be commissioned before whom deposition upon written questions may be taken, the defendant will have the option of withdrawing its cross-examination questions and re-cross examination questions.

DONE AND ORDERED, in Chambers, at Miami, Florida, this 3rd day of June, 2010.



JOHN J. O'SULLIVAN
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
United States District Judge Huck
All Counsel of Record